

ACQUISITION & RELOCATION

Posted 10/31/08

Can NSP1 grantees use NSP1 funds to provide down payment assistance and cover closing costs for families purchasing foreclosed properties rather than acquiring property directly?

Yes. Providing down payment assistance and closing costs to buyers are eligible under Eligible Use A. However, limiting your homeownership assistance activities to down payment and closing cost assistance may create additional challenges for you to meet the other program requirements such as stabilizing target areas of greatest need, ensuring that properties are vacant prior to purchase, and ensuring that properties assisted with NSP1 funds meet the housing habitability standards.

If a mortgage lender requires that funds be allocated for operating reserves as a condition of the lender approving a mortgage for a multifamily housing project, can NSP1 funds be used for the operating reserves?

Yes, NSP1 funds can be used for operating reserves if the NSP1 grantee can demonstrate that such a requirement is consistent with industry practices and the dollar amount of the required reserves is consistent with local industry standards.

If an NSP1 grantee incurs eligible costs through a failed acquisition of an abandoned or foreclosed property are the incurred costs still eligible?

Generally, yes. HUD recognizes that an NSP1 grantee may investigate the acquisition of some properties and incur costs before acquiring it (such as the cost of an appraisal or a title search), but then decide that the acquisition is not feasible. In such a case, HUD would support an NSP1 grantee that chooses to walk away from a property that looks to be problematic, rather than getting bogged down and losing valuable time when the 18-month obligation requirement is drawing near. For drawdown and reporting purposes, a grantee can allocate the project delivery costs of property acquisitions (or considering purchasing) across all properties under the acquisition eligibility category.

Posted 10/31/08

If the former owner is still living in a property, as a tenant, in a lender-foreclosed property, would the NSP1 grantee be required to pay relocation in order to acquire the property?

In the situation where you have a home that “has been foreclosed upon” (required by NSP1), the former-owner who is still in the property is usually no longer an owner (State law is going to dictate here). The former owner may be a tenant, if the new owner (the lender) has allowed them to stay under a lease agreement...or, they may not be a legal occupant and may be subject to a pending eviction (again, state law will dictate here). So, grantees need to be very careful about determining an “occupant’s” status and entitlements. An unlawful occupant (see 49 CFR 24.2(a)(29)) who is displaced for an NSP1-funded acquisition will not be

entitled to relocation assistance and payments. However, a lawful occupant displaced for an NSP1-funded acquisition will generally be eligible for relocation assistance and payments under the URA.

Updated 06/16/09

If a grantee purchases and rehabilitates a housing unit under NSP1 that is occupied by the former-owner (who is now a tenant under a lease agreement with the REO holder), can the housing unit be sold back to the former-owner/current-tenant? Would the tenant be eligible for relocation assistance during rehabilitation? What if they were not able to purchase the property at a later date?

Yes, the property can be acquired, rehabilitated and sold back to the former owner assuming the owner completes the required housing counseling and is successful in securing financing.

In terms of relocation assistance, if you require a legal tenant to move temporarily for rehabilitation of the property, you must pay temporary relocation costs (see page 2-8, paragraph 2-7 of the Handbook).

Pitfalls: Are you sure that the rehabilitation work will be completed in less than a year (maximum time for temporary relocation)? Do you know what the sales price will be based on the NSP1 rehabilitation requirements?

If the tenant is not financially capable of purchasing the property at the end of your proposed “lease to own” agreement, will you allow them to continue to rent or will you require them to move (pursue eviction). There are “eviction for cause” standards in the URA at 49 CFR 24.206. The issue may become what provisions relating to down payment or other program eligibility requirements are stated in the lease agreement and whether failure to meet those terms by some specified point in time would be considered “material” and is the nature of the breach “serious” or “repeated” and would be considered a basis for eviction under local law.

It is quite possible that evicting or requiring a non-purchasing tenant to move for failure to meet the purchase requirements of your NSP1 program may make them eligible for relocation assistance. It is critical that you properly structure your “lease to own” agreement and program in accordance with federal, state, and local law and that you adequately pre-screen rent-to-own homebuyers before entering into an agreement with them.

Posted 11/7/08

If a jurisdiction institutes a lease-purchase program, will the grantee be required to relocate the tenant if he/she does not qualify to purchase the property at the end of the lease term?

Generally no, if the following conditions are met:

- this is a new tenant--who was not in the property at the time of the Initiation of Negotiations (ION) for acquisition, demolition, rehabilitation or conversion of a lower income unit for an NSP1-funded project—someone the URA would consider a “subsequent tenant.”
- before agreeing to occupy the unit, the tenant was provided with a Move in Notice (see 24 CFR 570.606(b)(2)(ii)(B)) that advised them they were occupying an NSP1-funded project for a lease-to-own program and that if they were unable to meet the eligibility requirements to become an owner within the program’s time limit that they would not be eligible for relocation assistance under either the URA and/or section 104(d) (see Appendix 29 of Handbook 1378 for a sample Move in Notice).

However, the eviction for cause standards in the URA 49 CFR 24.206 would also apply. The issue may become what provisions relating to downpayment or other program eligibility requirements are stated in the lease and whether failure to meet those terms by some specified point in time would be considered “material” and is the nature of the breach “serious” or “repeated” and would be considered a basis for eviction under local law.

Updated 06/16/09

Can the NSP1 funds be used to rehabilitate foreclosed properties that are not residential when those activities will further neighborhood stabilization, such as a community grocery store?

Yes, under Eligible Use E, a grantee may acquire demolished or vacant properties (including vacant structures) that are not residential for redevelopment. As noted in the question, these must generally be located in targeted areas of greatest need and support the activities in the area that are acquiring, repairing, and selling foreclosed or abandoned homes. Eligible Uses A, B, and C are limited to homes and residential properties.

Updated 06/16/09

If an NSP1 grantee or subrecipient purchases a vacant foreclosed home with NSP1 funds and uses another source of financing for the rehabilitation, can the LMMA national objective be used, meaning the home could be sold to a household over 120% AMI (provided that the home is located in a low-mod area in accordance with the LMMA national objective)?

No, all NSP-assisted housing acquisitions and rehabilitation activities must satisfy the LMMH national objective. As in the CDBG program, all housing rehabilitation activities must meet the national objectives as housing, not area benefit. The NSP1 Notice specifically states that an activity meets the HERA national objective if the activity “provides or improves permanent residential structures that will be occupied by a household whose income is at or below 120% of area median income”.

Posted 11/7/08

Can NSP1 funds be used to refinance existing mortgages and prevent foreclosure?

No. NSP1 funds may not be used to refinance existing mortgages and prevent foreclosure. The program was designed to stabilize communities through acquisition and redevelopment of properties that have already been foreclosed or abandoned. NSP1 grantees should design activities based on the eligible activities listed in the NSP1 Notice.

Posted 06/16/09

If an NSP grantee or designee acquired property during the pre-award period (before NSP1 funding was available) would the acquisition and rehabilitation costs be eligible?

NSP 1 grantees or their designees (subrecipients or developers) are not authorized to begin acquiring property until the grantee has submitted an action plan amendment to HUD. For most NSP1 grantees, the earliest acquisition start date would be December 1, 2008, but for those grantees that submitted an action plan amendment prior to December 1, 2008, an earlier date could be acceptable. However, under Eligible use E, if the property is vacant NSP1 funds can be used for rehabilitation regardless of when the property was acquired. A vacant property is one on which the land and/or buildings are vacant (unoccupied). If there are blighted structures on the property, the grantee could use NSP funds to demolish those structures under Eligible use D; the property would then be vacant and can be redeveloped under Eligible Use E. The grantee should be aware that if the property is acquired with other funding, the Environmental and Uniform Act requirements still apply if NSP funds will be used for the rehabilitation components of the project.

Updated 03/26/09

URA regulations require grantees to send a letter to the sell (Bank) regarding the occupancy and other conditions 60 days before closing. Does this requirement apply to NSP1? Can the appraisal be completed by the lender holding the property or must the acquiring entity order the appraisal?

The NSP1 Notice requires that the buyer obtain an appraisal that is issued within 60 days from the date of the final offer. We realize that the initial offer may not comply with the purchase discount requirements so multiple offers may be made before a final purchase price is agreed upon. There is no time limit for “closing” an acquisition under NSP1.

The acquiring entity can order the appraisal if it complies with the NSP1 Appraisal Guidance (located on the NSP1 website, in NSP1 Resources box, on the Policy Guidance page).

Posted 11/13/08

What is the Initiation of Negotiations (ION) date for NSP1 (the date on which a tenant-occupant becomes eligible for relocation assistance and must be issued a Notice of Eligibility)?

If the tenant is displaced as a result of privately undertaken rehabilitation, demolition, or acquisition, NSP1 uses the definition of ION found at 24 CFR 570.606(b)(3) of the CDBG regulations: The date of the execution of the loan or grant agreement between the grantee (or State or state recipient, as applicable) and the person owning or controlling the real property. Otherwise, the definition found in the URA at 49 CFR 24.2(a)(15) is applicable.

Updated 06/17/09

If an NSP1 designee (e.g.; subrecipient or developer) is acquiring a foreclosed property with NSP1 funds, is the designee required to provide written notice to the owner (REO title holder) that the terms of the acquisition must comply with the voluntary acquisition provisions of the Uniform Relocation Act (URA)?

Yes. The URA voluntary acquisition requirements (49 CFR 24.101(b)(1)-(5)) apply to anyone who uses NSP1 funds (or any Federal financial assistance) to acquire property including any Agency, non-profit, or individual homebuyers who use federally-funded downpayment or other financial assistance. To meet these requirements, the owner of record must be notified in writing that Federal financial assistance will be used in the transaction and that if agreement cannot be reached through negotiation, that the acquisition will not take place.

Further, under NSP1, an appraisal of the foreclosed property must be made to determine the current fair market value 60 days prior to making the final offer and the owner must be advised that, under NSP1, the acquisition price must be at a 1% discount from the fair market value (the offer price should reflect the discount proposed by the buyer).

There are specific URA voluntary acquisition requirements that must be met depending on whether or not the buyer has the power of eminent domain and will not use it (see 49 CFR 24.101(b)(1)(i)-(iv)) or if the buyer does not have the power of eminent domain (see 49 CFR 24.101(b)(2)). Any acquisition under possible threat of eminent domain, cannot be considered a “voluntary acquisition” (even if the seller is willing to negotiate). HUD has developed a number of sample guideforms to assist NSP1 grantees in meeting these requirements. The guideforms and other information and resources are available on the NSP1 Acquisition & Relocation Resources page located at:
<http://www.hud.gov/offices/cpd/library/relocation/NSP1/index.cfm>

Updated 06/17/09

On page 58331 of the October 6, 2008 NSP1 Federal Register Notice, it states that the current market appraised value must comply with the URA requirements at 49 CFR 24.103. Does that mean that NSP1 grantees must do both an appraisal and a review appraisal?

No. The Notice specifies that the URA appraisal requirements of 49 CFR 24.103 must be used in the valuation of NSP1 funded acquisitions of “foreclosed upon”

properties. The URA review appraisal requirements of 49 CFR 24.104 are not required, nor is an appraisal review required. However, NSP1 grantees and subrecipients may choose to adopt an appraisal review process and URA appraisal review requirements for NSP1 funded acquisitions if they so choose.

Posted 11/13/08

Must appraisers meet all state certification requirements and be FIRREA certified or could knowledgeable grantee staff perform this function?

Persons performing appraisals of NSP1 funded acquisitions of “foreclosed upon” properties must meet the appraisal qualifications of 49 CFR 24.103(d). All persons performing such valuations must be qualified to perform an appraisal, even if they are on staff. The regulations at 49 CFR 24.103(d)(2) only require contract “fee” appraisers to be state licensed or certified. Staff appraisers are not required to possess such qualifications, however, they must be qualified. In most circumstances, staff appraisers possess a state appraisal license or certification, even though they are not required to do so by regulation.

Posted 11/13/08

Can NSP1 funds be used to provide financial assistance to relocate a tenant from an area defined as “greatest need” in a grantee’s action plan, if the tenant is moving but is not displaced by an NSP1-funded acquisition or other activity?

No. NSP1 cannot be used to provide financial assistance to persons not displaced by an eligible NSP1 activity.

Posted 11/13/08

How do we define “project” under NSP1 for the purpose of complying with the URA?

The URA regulations define “program or project” at 49 CFR 24.2(a)(22). There is no alternative definition provided under NSP1.

Posted 11/13/08

If there were tenants in the property when the lender/servicer completed foreclosure and the lender/servicer completes the eviction process prior to initiation of negotiations for the sale of the property to an NSP1 grantee, does the NSP1 grantee need to comply with the 12-month look-back provision of the URA?

There is no 12 month “look back” period in the URA statute or regulations. Any legal occupant who is evicted for the purpose of evading a relocation obligation may be eligible for assistance. The URA does address “Eviction for Cause” at 49 CFR 24.206.

Under section 104(d), HUD looks at “vacant occupiable” lower-income dwelling units that have been occupied within 3 months before the execution of an agreement for one-for-one replacement purposes and we would see this as a reasonable timeframe for any NSP1 grantee to consider when approaching an

owner about purchasing a foreclosed property under this new program (for some level of assurance that the owner did not evict a legal occupant in order to sell the property as vacant to the grantee). However, a grantee must use due diligence when approaching any owner about purchasing property with Federal funds, particularly if the property is currently occupied or may have been recently occupied, to assure that the project does not influence the owner's decision to evict an occupant and cause their displacement in order to participate in the grantee's program.

Where an owner either evicts a tenant in order to sell a property as "vacant" to an Agency for a HUD-funded project, HUD will usually presume that the tenant was displaced "for the project." In such cases, the Agency would be responsible for finding the displaced tenant and providing appropriate relocation assistance, unless the Agency can prove that the tenant's move was not attributable to the project (see HUD Handbook 1378, Chapter 1, paragraph 1-6 J.1, regarding evictions for additional guidance).

<http://www.hud.gov/offices/adm/hudclips/handbooks/cpdh/1378.0/1378chp1CPDH.pdf>

Posted 11/13/08

The NSP1 Notice states that the 104(d) one for one unit replacement requirements are waived. Are the 104(d) relocation requirements also waived? It is likely that many NSP1 activities will involve demolition or conversion so 104(d) might well be triggered.

No, as stated in the Notice, HUD is not specifying alternative requirements to the relocation assistance provisions at 42 U.S.C. 5304(d). The 104(d) relocation assistance provisions of 24 CFR 42.350 are applicable to NSP1 funded projects and have not been waived. Additionally, NSP1 funding recipients must also comply with the 104(d) Residential Anti-displacement and Relocation Assistance Plan (RARAP) requirements of 24 CFR 42.325, which also have not been waived.

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If the grantee buys properties under NSP1 and allows a tenant to move in to a property prior to sale, rehab or demolition, would that tenant be entitled to relocation assistance if they are later required to move out? If yes, can this requirement be mitigated by using the "move-in notice" prior to when the tenant signs their lease? Note that this issue could include both residential and commercial tenants if the grantee allows these tenants to occupy the acquired site.

If a new residential-tenant (who was not in the property at the time of the Initiation of Negotiations (ION) for acquisition of a property for an NSP1-funded project--someone the URA would consider a "subsequent tenant") were provided with a Move in Notice that complies with 24 CFR 570.606(b)(2)(ii)(B) prior to leasing or occupying the property (see Appendix 29 of Handbook 1378 for a sample Move in Notice), then neither the URA nor section 104(d) relocation payments would be applicable. The key is that the tenant be fully informed of the possibility that they could be displaced for the planned project before agreeing to

occupy the unit. This same principal could be applied to non-residential tenants who receive a Move in Notice based on the URA definition of “persons not displaced” under 49 CFR 24.2(a)(9)(ii)(B) and (C) since the non-residential tenant would have moved in after ION and be fully informed of the pending project.

Updated 06/17/09

Under NSP1, if a grantee is buying all or substantially all of the foreclosed properties in a targeted area (for example for a land bank or an area of greatest need), would those acquisitions be considered “involuntary” and if yes, would the URA involuntary sale rules apply or would the NSP1 Notice text on page 58339 mean that the voluntary process would be followed?

No, unless this acquisition is being made under the threat of eminent domain or for a specific designated purpose with defined boundaries that are limiting (such as construction of a multi-family housing project or a community center or park on a site defined as two specific blocks). Purchasing foreclosed upon properties for a land bank or making acquisitions of foreclosed upon properties that are randomly available in a specific zip code or neighborhood would NOT be subject to the involuntary requirements.

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A bank has foreclosed on a property and a tenant in the property is forced to move as a result. There are no Federal funds involved in a purchase of the property or reuse. The tenant doesn’t know what to do and doesn’t have immediate funds to find another place. Can a city use NSP1 funds to provide relocation assistance (security deposit, first month’s rent, etc.)?

The tenant is not eligible for URA assistance or payments, nor may NSP1 funds be used to assist this tenant (since they were not displaced by the NSP1 program). However, the city could develop a program using CDBG funds to provide optional relocation assistance (see 24 CFR 570.606(d)).

Posted 11/13/08

If NSP1 funds are combined with other federal funds in a project, including CDBG or HOME, would the NSP1 rules apply or the standard URA and 104(d) rules, including one for one replacement of units?

It is possible that both would apply. The answer would depend on the nature of the project and the use of funds. If NSP1 funds are used to purchase a foreclosed property, then the acquisition is subject to the NSP1 requirements (appraisal, discount, etc.). If HOME funds are used for rehabilitation of this foreclosed property into rental housing affordable to low-moderate income persons, then the HOME rules on income eligibility, HOME rents, affordability period, etc. are applicable. If CDBG funds are used for demolition to convert a low-moderate income dwelling unit that was on this NSP1-acquired property into a park, then the one for one replacement requirements of section 104(d) are applicable (even if NSP1 was used for acquisition of the property).

Posted 11/13/08

The section 104(d) one-for-one replacement requirement for lower income dwelling units demolished or converted has been replaced in NSP1 by a

disclosure of the units affected and reporting on new low- and moderate-income units created. Could a jurisdiction count any affordable units produced under the NSP1 program toward meeting its one-for-one replacement requirement under another project funded with either CDBG or HOME?

Yes. An affordable unit created with NSP1-funds may be counted as a replacement unit against a grantee's one-for-one replacement obligation created as a result of the use of CDBG or HOME funds for another project, provided the NSP1 unit meets the requirements of 24 CFR 42.375(b).

Posted 11/13/08

If the re-use of the property is paid by state, local or private funds and the tenant is then asked to move out, would their move be considered to be caused by a "federal project" and thus would the URA be triggered at that point?

A tenant who is required to move for a planned re-use project that is not federally-funded, would not be subject to the URA (however, such a move may be subject to state or local relocation requirements).

Posted 11/20/08

If a home is purchased and rehabilitated with NSP1 funds:

Is there a minimum threshold for reselling the home?

No. There is no minimum price threshold so long as the sale of the home conforms to the NSP1 affordability requirements.

Does the buyer's purchase discount count against the 50% limitation on direct assistance to homebuyers?

The 50% limit applies to down payment assistance. Other means of writing down the purchase price such as purchase price discounts, soft second mortgages, etc. do not count against the down payment assistance cap.

Posted 11/20/08

Does NSP1 trigger Davis Bacon requirements when the funds are used solely for down payment assistance or closing costs?

No. Davis Bacon applies only when rehabilitating or constructing 8 or more units.

Posted 12/01/08

Can a property be purchased through a short sale using NSP1 funds?

No. Short sales are typically used to prevent a foreclosure. Owners use the proceeds of short sales to settle outstanding obligations with lenders. As such, the title to the property remains in the hands of the homeowner until the sale is

executed. Accordingly, a short sale property would not meet the definition of a “foreclosed upon” property provided in the NSP1 Notice.

Posted 06/17/09

Is there a minimum purchase price that would eliminate the appraisal requirement for NSP1-funded acquisitions of foreclosed upon properties?

HUD has determined that compliance with URA appraisal requirements is unnecessarily burdensome if the anticipated value of the proposed acquisition is estimated at \$25,000 or less and the acquisition is voluntary. Consequently, if the grantee determines that the anticipated value of the proposed acquisition is estimated at \$25,000 or less and the acquisition is voluntary, the current market appraised value of the property may be established by a valuation of the property that is based on a review of available data and is made by a person qualified to make the valuation (see NSP1 Bridge Notice page 9 for further details).

Updated 06/17/09

Are NSP1 grantees authorized to acquire abandoned properties through real estate auctions? If so, how would the grantee comply with the current market appraised value requirement for NSP1-funded acquisitions since bidders will determine the price?

Yes, a grantee could bid for the property at an auction sale provided the property complies with the definition for “abandoned” cited in the October 6, 2008 NSP1 Federal Register Notice. In terms of the appraisal requirement, no appraisal is required to purchase “abandoned” properties under NSP1.

However, acquisition of a property at a sheriff’s sale with NSP1 funds does not release the grantee from the requirements of the URA with regard to purchasing property. The acquisition policies of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act) apply to any acquisition of real property for a federally funded project except for acquisitions described in 49 CFR 24.101(b)(1) through (5) (commonly referred to as “voluntary acquisitions”). The same standards apply to the acquisition of real property at a foreclosure sale for a federally funded project. An acquiring Agency undertaking a “voluntary” acquisition must comply with the procedures described in 49 CFR 24.101(b). For instance, purchasing property under the “voluntary” acquisition provisions at 49 CFR 24.101(b)(1)-(2) requires certain disclosures concerning the voluntary nature of the acquisition and the purchaser’s estimate of the market value of the property. An acquiring Agency must also comply with governing State and local law. The acquiring Agency should consult such laws to determine the identity of the legal title owner at the foreclosure sale and whether any applicable URA disclosures can be made to the legal title owner.

It is essential that an acquiring Agency consult State foreclosure law before acquiring property at a foreclosure sale. Issues including, but not limited to, the following must be taken into consideration:

- Does the State require a judicial foreclosure process? If not, then what process is used to foreclose the property?
- During and after foreclosure, who will hold legal title to the property?
- During and directly following foreclosure, who has the right to possess the property?
- Does the foreclosed upon owner have any redemption rights under state law?
- To what degree will the title being passed at the foreclosure sale be marketable?
- What subordinate rights and interests in the property are wiped away as a result of the foreclosure proceeding?

If State or local law precludes compliance with the Uniform Act's acquisition provisions, the acquiring Agency should contact its local HUD Regional Relocation Specialist. The Regional Relocation Specialist will consult with CPD Headquarters and program counsel regarding any potential conflict between the requirements of the Uniform Act and State/ local law in order that appropriate next steps can be determined. Contact information for HUD's Regional Relocation Specialists can be found at www.hud.gov/relocation/contacts.

Posted 3/30/09

When can an NSP1 grantee begin acquiring properties under NSP1 or authorize subrecipients or private entities to acquire properties with NSP1?

NSP1 acquisitions are not authorized to begin until the grantee has submitted an action plan amendment to HUD. For most NSP1 grantees, the earliest acquisition start date would be December 1, 2008, but for those grantees that submitted an action plan amendment prior to December 1, 2008, an earlier date could be acceptable. In addition to submitting an action plan amendment, NSP1 grantees must comply with the environmental review, purchase discount and other eligible-use criteria discussed in the Guidance on Eligible Uses prior to acquiring properties under NSP1. If the acquisition is performed by a subrecipient, private developer or homebuyer, the grantee must give permission or enter into an agreement prior to the acquisition. Properties acquired out of foreclosure before these requirements have been met are not eligible for NSP1 assistance. If you have any doubts about the compliance of an acquisition please contact your local HUD representative or email NSP1-questions@hud.gov before proceeding.

Posted 06/03/09

Is an NSP1 grantee required to have a separate Residential Anti-displacement and Relocation Assistance Plan (RARAP) for each NSP1-funded project?

No. As part of its Consolidated Plan, each jurisdiction is required to submit a certification that it has in effect and is following a Residential Anti-displacement and Relocation Assistance Plan (RARAP) in connection with any activity assisted with funding under the CDBG or HOME Programs (including NSP1). Any grantee receiving funds from the State, local government, or Participating Jurisdiction under their CDBG, HOME or NSP1 Programs should be made aware

of and required to comply with the jurisdiction's existing RARAP. Individual project RARAPs are not prohibited, however, maintaining, managing, and enforcing multiple plans is not recommended. Guideform RARAP has been developed in the event that any jurisdiction wants to consider revisions to its existing RARAP. The RARAP requirements are addressed in 24 CFR 42.325.